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Jack Rabbit, LLC & 280 Station LLC (d/b/a Cowboys)

10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF NEW YORK**

13 **IN RE PAYMENT CARD INTERCHANGE**  
14 **FEE AND MERCHANT DISCOUNT**  
15 **ANTITRUST LITIGATION**

Case No. 05-MD-01720 (MKB) (JO)

16  
17 **DECLARATION OF PAUL S. ROTHSTEIN IN SUPPORT OF THE FED. R. CIV. P.**  
18 **23(a) AND 23(b)(3) SUBCLASS CERTIFICATION AND MOTION FOR**  
19 **APPOINTMENT AS SUBCLASS COUNSEL**

20 I, Paul S. Rothstein, declare as follows:

21 1. I am an attorney of record in the above styled action and one of the attorneys of  
22 record for Jack Rabbit. I submit this Declaration in Support of Appointment as Co-  
23 Subclass Counsel for Retail Gas Station Owner Franchisee pursuant to Fed. R. Civ.  
24 P. 23(a) and 23(b)(3) Subclass Certification.

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27 DECLARATION OF PAUL S. ROTHSTEIN IN SUPPORT OF THE FED. R. CIV. P. 23(a) AND 23(b)(3)  
28 SUBCLASS CERTIFICATION MOTION AND MOTION FOR APPOINTMENT AS SUBCLASS COUNSEL  
PAGE 1

- 1       2. I am personally familiar with the facts set forth in this Declaration. If called as a
- 2       witness, I could and would testify to the matters stated herein.
- 3       3. My experience in class action litigation and complex litigation includes my
- 4       representation of clients in the following cases:

6                     Lead Counsel: *Bronson, et al. v. Samsung Electronics America, Inc.*, USDC  
7                     Northern District of California, No.: 3:18-cv-02300-WHA (Class Action,  
8                     Certification for Settlement Purposes)

9                     Lead Counsel: *Ware, et al. v. Best Buy Stores, L.P.*, Cook County, Illinois, Case No.  
10                   2021 CH 04264 (Class Action)

11                   Lead Counsel: *Browning, et al. v. The University of Florida Board of Trustees.*,  
12                   Alachua County, Florida, CASE NO.: 2019 CA 3236 (On Appeal in the 1<sup>st</sup> Circuit)

13                   *In re: Deere & Company Repair Services Antitrust Litigation*, USDC Northern  
14                   District of Illinois, 3:22-cv-50188 (Antitrust litigation ongoing)

15                   In re: Payment Card Interchange Fee And Merchant Discount Antitrust Litigation,  
16                   USDC Eastern District of New York, No. 05-MD-01720 (MKB) (JO) (Representing  
17                   Objector/Proposed Intervenor/Proposed Subclass representative Jack Rabbit)

18                   In re: ENDO INTERNATIONAL plc, et al., United States Bankruptcy Court  
19                   Southern District of New York, Case No. 22-22549 (JLG) (Counsel for Independent  
20                   Emergency Room Physician Selected to be a member of Opioid Creditor Ctee)

21                   In re: MALLINCKRODT plc, et al., United States Bankruptcy Court Southern  
22                   District of Delaware, Case No. 20-12522 (JTD) (Counsel for Independent  
23                   Emergency Room Physician Selected to be a member of Opioid Creditor Ctee)

24                   Co-lead Counsel: *Lee-Bolton et al. v. Koppers Inc. et al.*, 1:IO-cv-253- MCR-GRJ;  
25                   United States District Court, Northern District of Florida (Class Certification  
26                   Denied)

27                   Lead Counsel: *Ortega v Chevron, et al.*, 4:14-cv-02416, Southern District of Texas  
28                   (Houston Division) (Class Certified for settlement purposes)

29                   Co-lead Counsel: *Yariv. et al. v. AT&T Corp., et al.*, SOM-L-272-05 Superior Court  
30                   of New Jersey, Somerset County (Class Certified, case settled.)

1                   *Hill v. The Hoover Company, et al.*, 01-2005-CA-759  
2                   Eighth Judicial Circuit in and for Alachua County Florida (Class certification  
3                   denied)

4                   *Sunflower Health, Inc., v. First Data Corp., et al.*, 1:15-cv-00128-MW-GRJUSDC  
5                   Northern District of Florida, Gainesville Division (Case Compelled to Arbitration)

6                   *Hall et al., v. SeaWorld Entertainment Inc.*, 3:15-cv-00660-CAB-RBB  
7                   USDC Southern District of California (Dismissed on Appeal)

8                   *Garmey. et al. v. Perry. et al.*, Nevada state court - Las Vegas. (Class certified and  
9                   settlement approved by court.)

10                  *Fiala v. Metropolitan Life Ins. Co.* New York state court, New York, New York.  
11                  (Class certified; case settled.)

12                  *Wise. et al. v. Correctional Medical Services. et al.*, 97-665-CAA Marion County,  
13                  Florida (Class certified, de-certified on appeal, case settled.)

14                  *Cox v. Shell Oil Company, et al.*, Chancery Court for Obion County, Tennessee, at  
15                  Union City, Tennessee; (Class Action – Defective Product)

16                  *Spencer et at. v. Shell Oil Company, et al.*, Circuit Court of Greene County, Alabama;  
17                  (Class Action – Defective Product)

18                  *Viera v. Hoechst Celanese Corporation, Shell Oil Company d/b/a Shell Chemical  
19                  Company; E.I. Dupont et al.*, Circuit Court of the 11<sup>th</sup> Judicial Circuit, Dade County,  
20                  Florida; (Class Action – Defective Product)

21                  *Walker v. State Farm Mutual Automobile Insurance Company and State Farm Fire  
22                  and Casualty Company*, Circuit Court of the 11<sup>th</sup> Judicial Circuit, Dade County,  
23                  Florida; (Class Action – Insurance)

24                  *Campbell. et al. v. Braun. et al.*, 98-8605-CAA Marion County, Florida (Class  
25                  certified, de-certified on appeal.)

26                  *Dunmore. et al. v. The Progressive Corporation. et al.* MDL Docket No.: 1519  
27                  USDC Northern District of Florida (Putative class - different class complaint  
28                  certified for settlement purposes. Mr. Rothstein, in association with other counsel, on  
                      behalf of Ms. Dunmore, objected to the proposed settlement.)

1                   *Hunter's Ridge, et al. v. Georgia-Pacific Corporation, et al.*  
2                   USDC Middle District of Florida (Complex litigation, not a class action.)

3

4         4. Undersigned Counsel seeks Subclass certification for Branded Operators/Retail Gas  
5                   Station Franchisees and Jack Rabbit's appointment as subclass representative and his  
6                   counsel's appointment as subclass counsel.

7         5. The Subclass of Branded Operators/Retail Gas Station Franchisees have met the  
8                   requirements for certification under Rule 23(a) and Rule 23(c)(5).

9                   a. The Subclass of Branded Operators is so numerous that joinder of all  
10                   members is impractical.

11                   b. Branded Operators/Retail Gas Station Franchisees are Cost-Plus Direct  
12                   Purchasers under *Illinois Brick*.

13                   c. Jack Rabbit has claims that are typical of the Subclass.

14                   d. Jack Rabbit, and his Counsel, will fairly and adequately represent the interests  
15                   of the Subclass.

16

17         6. Jack Rabbit, through counsel, since July of 2019 has zealously litigated on behalf of  
18                   Retail Gas Station Franchisees (*See* Jack Rabbit's Objections To Both The Proposed  
19                   Settlement And Class Counsel's Request For Attorney's Fees; And Notice Of Intent  
20                   To Appear, Dkt. No. [7574]) and argued in favor of establishing a subclass for  
21                   Branded Operators. (*See* Fairness Hearing Transcript Pages 15 – 26)

22

23         7. Jack Rabbit's counsel identified, at the Fairness Hearing, the Class Counsel conflict  
24                   reiterated by the 2<sup>nd</sup> Circuit. (*See* Fairness Hearing Transcript Page 21, lines 10-12)

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- 1       8. Counsel for Jack Rabbit has no conflicts in representing the subclass of Branded
- 2              Operators/Franchisees.
- 3       9. Counsel for Jack Rabbit has the requisite knowledge, expertise and resources needed
- 4              to represent the Branded Operator/Retail Gas Station Franchisees in this case.
- 5       10. Counsel for Jack Rabbit is the best applicant for Subclass Counsel under Rule 23(g)
- 6              and should therefore be appointed Subclass Counsel pursuant to Rule 23(g)(2).
- 7       11. The statements contained in this declaration are true and correct and of personal
- 8              knowledge.

11 Executed this 26<sup>th</sup> day of May 2023.

12              *By: /s/Paul S. Rothstein*  
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